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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA–SAN JOSE DIVISION

In re

ACACIA MEDIA TECHNOLOGIES CORPORATION

Case No. C-05-01114 JW

CABLE AND INTERNET DEFENDANTS' SUPPLEMENTAL OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE COURT'S THIRD AND FOURTH CLAIM CONSTRUCTION ORDERS

Date: August 17, 2007
Time: 9:00 a.m.
Courtroom: 8, 4th Floor
Judge: Honorable James Ware

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INTRODUCTION

The Cable and Internet Defendants[1] write separately in order to highlight two points for the Court. First, if the Court is inclined to alter its constructions of "transmission system" or "receiving system," it should not adopt Acacia's constructions, but should hold that those terms are indefinite. Second, the Court should reject the most recent of Acacia's several attempts to save claims 45 and 46, which are indefinite.

ARGUMENT

A. If the Court reconsiders its constructions of "transmission system" and "receiving system" at all, it should find those terms to be indefinite.

In its motion for reconsideration, Acacia asks the Court to adopt a dictionary definition for "transmission system," and an analogous definition for "receiving system." But as the Federal Circuit held in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005), claim terms must be interpreted in light of the specification, and dictionary definitions should only be used to the extent that they are consistent with the specification. *Id.* at 1315, 1321. Dictionary definitions are broad by nature, and their failure to "fully appreciate how the specification implicitly limits that definition" leads to a construction of the claim that is "unduly expansive." *Id.* at 1321.

If there is one thing that is certain here, it is that the patentees used the terms "transmission system" and "receiving system" (and many other terms) in unconventional ways. While Acacia proposes that the "transmission system" of the '992 patent is "an assembly of elements capable of functioning together to transmit signal waves" (Acacia Br. at 12), the transmission system disclosed in the specification performs multiple functions other than transmitting signal waves.

[1] The following defendants join in this brief: Comcast Cable Communications LLC; Insight Communications, Inc.; Cox Communications, Inc.; Hospitality Network, Inc.; Charter Communications, Inc.; Armstrong Group; Block Communications, Inc.; East Cleveland Cable TV & Communications LLC; Wide Open West Ohio LLC; Massillon Cable TV, Inc.; Mid-Continent Media, Inc.; US Cable Holdings LP; Savage Communications, Inc.; Sjoberg's Cablevision, Inc.; Loretel Cablevision; Arvig Communications Systems; Cannon Valley Communications, Inc.; NPG Cable, Inc.; Ademia Multimedia, LLC; AEBN, Inc.; Audio Communications, Inc.; Cyber Trend, Inc.; Cybernet Ventures, Inc.; ACMP, LLC; Game Link, Inc.; Global AVS, Inc.; Innovative Ideas International; Lightspeed Media Group, Inc.; National A-1 Advertising, Inc.; New Destiny Internet Group, LLC; VS Media, Inc.

For example, the '992 transmission system includes a storage library for physical items containing information, an identification encoder, analog-to-digital converters, audio and video compressors, a compressed data library, and a system for processing user requests. *See*, *e.g.* Figs. 2a & 2b.[2] Contrary to Acacia's proposed definition, those elements do not "function[] together to transmit signal waves" unless that phrase is interpreted so broadly that it becomes meaningless.[3] Likewise, the receiving system contains numerous elements that, contrary to Acacia's definition, do not "function[] together to receive transmitted signal waves" under any meaningful interpretation of those words. *See*, *e.g.*, Fig 6 (including storage, decompression and user interface components in the reception system).

Faced with this unconventional usage, the Court fashioned constructions of the terms "transmission" and "receiving" system that account for the specification's disclosures, as Federal Circuit law requires. *See Phillips*, 415 F.3d at 1321 ("[T]he specification is the single best guide to the meaning of a disputed term, and . . . the specification acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication.") (quotation marks omitted). Yet Acacia's motion for reconsideration asks the Court to simply ignore the specification in favor of a dictionary definition. That not only contravenes the teaching of *Phillips*, but also the "purpose of the definiteness requirement," which is to "ensure that the claims delineate the scope of the invention using language that adequately notifies the public of the patentee's right to exclude." *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347 (Fed. Cir. 2005). If, as Acacia implies, *any* component – including ones that have nothing to do with the transmission or reception of information – may be included in either the transmission or receiving system, then there is no way to distinguish between the transmission system and the receiving system, and no way to determine what is and is not included in the combined "transmission and receiving system." The terms mean everything and nothing.

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[2] References are to the '992 specification unless noted otherwise.

[3] Indeed, the patentees used the term "transmit" to describe many things that fall outside any ordinary usage of that word. For example, in claim 14 of the '863 patent, the "transmitting step" is described as comprising *inputting* an item having information, *assigning a unique identification code* to the item, *formatting the item* as a sequence of addressable data blocks, *compressing* the formatted and sequenced data blocks, *storing as a file* the compressed, formatted, and sequenced

Numerous examples demonstrate the peril of Acacia's approach. As set forth in detail in the Round 2 Defendants' May 2006 briefing, the Yurt patents are full of confusing and sometimes contradictory disclosures regarding what is meant by the terms "reception system" and "receiving system." *See* Round 2 Defs.' Br. filed 5/8/06 (Doc. 155) at 4-12. That confusion is compounded by the addition of seemingly related but distinct terms like "subscriber receiving station," "local distribution system," and "receiving device," all of which the reader must try to liken to or distinguish from a "reception" and/or "receiving" system, with little or no help from the specification. *See* Fourth Claim Construction Order (Doc. 220) at 7-8 and 9-10.

In addition to this confusion between "reception" and "receiving" systems, it is difficult — if not impossible — to tell where the transmission system ends and the receiving (or reception) system begins without clear definitions that circumscribe their bounds. Indeed, the Court identified an instance of this confusion when it asked whether the library access interface 121 is in the transmission system or the receiving system. Third Order at 33-34. The answer to that question is unclear because the specification identifies library access interface 121 *both* as part of the reception system (Col. 17:44-45) *and* as part of the transmission system (Fig. 2b; Col. 3:28-30; 13:29-47). Similarly, Figure 1g "shows a high level block diagram of the transmission and receiving system of the present invention including transmission system 100 distributing to a reception system 200, which then preferably transmits requested material over airwave communication channels 200d, to a plurality of users." Col. 4:52-57. Thus, the *reception* system *transmits* information to users, which is contrary to any normal understanding of what a reception system does, further blurring the boundaries between what may be considered the "transmission system" and what may be the "reception" or "receiving" system.

Acacia itself cannot escape the confusion that its proposed constructions create. Applying its definitions, Acacia cannot determine what is in the "transmission" system, what is in the "reception" or "receiving" system, and what is in neither. For example, in its April 2006 briefing

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data blocks with the assigned ID code, and, finally, *sending* at least a portion of the file.

on the '992 patent, Acacia identified element 200d of reception system 200 as corresponding structure for the "transmission means in the transmission system" even though the specification states that 200d is part of the *reception* system. *See* Acacia Br. filed 4/17/06 (Doc. 145-3) at 74; Col. 4:52-57. Similarly, Acacia defined the term "intermediate storage device" as a device situated *between* the transmission system and the receiving system. *See* Acacia Br. filed 4/17/06 (Doc. 145-2) at 44-45. But in at least some cases, the patent requires that the "intermediate storage device" be included *within* the "receiving system" – a logical impossibility under Acacia's reading. '992 Claim 53.

The Court should reject Acacia's proposed constructions because they are inconsistent with the disclosures in the specification and rob the public of any way to determine the boundaries of the transmission and receiving systems that the '992 patentees purport to have invented. The only options here are to construe the terms "transmission system" and "receiving system" consistent with the way those terms are used in the specification, as the Court has done, or to declare that they cannot be construed. *See, e.g.*, *Phillips*, 415 F.3d 1315-17; *Datamize*, 417 F.3d at 1347. Thus, if the Court is inclined to deviate from its constructions of "transmission system" and "receiving system," it should hold that those terms are indefinite and that any claims in which those terms are used are invalid.

B. Claims 45 and 46 are indefinite.

In its briefing regarding claim 45, Acacia argues that the Court erred in stating that the specification does not describe storage in multiple files and in finding the claim arguably indefinite. But the specification does *not* describe a method that performs the steps of claim 41, which result in the creation and transmission of a *single* file, but also, in the midst of the claim 41 steps, comes up with a *plurality* of files to store, which is what claim 45 seems to require. Nor can Acacia explain away the insoluble ambiguity created by the fact that claim 45 requires the separate storage of a plurality of files, but the last step of claim 41 requires sending "*the file*," with no way to determine which of the plurality of files is sent.

As for claim 46, the Court requested further briefing on when the step "generating a listing of available items" occurs. Neither the claim nor the written description answers that question. In any event, claim 46 is indefinite because it depends on claim 45, which is indefinite for the reasons stated above and in prior briefing. *See*, *e.g.*, 8/14/06 Br. re Claims 45 & 46 (Doc. 204).

CONCLUSION

For the foregoing reasons, if the Court reconsiders its constructions of "transmission system" and "receiving system," it should find those terms to be indefinite. The Court should also reject Acacia's most recent attempt to save claims 45 and 46, which are indefinite.

Dated: July 18, 2007

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